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**DECLARATION OF EASEMENTS,
RESTRICTIONS AND COVENANTS**

THIS DECLARATION OF EASEMENTS, RESTRICTIONS AND COVENANTS
("Declaration") is made as of March 14, 2013, by **Riverwalk Investments II, LLC**, a Utah limited liability company ("**Riverwalk**", also sometimes referred to herein as "**Declarant**").

RECITALS

A. Riverwalk is the owner of certain property legally described on **Exhibit "A"** attached hereto located in Midvale City, Salt Lake County, Utah (hereinafter referred to as the "**Riverwalk Center**"), as depicted on the latest preliminary site plan attached hereto as **Exhibit "B"** (the "**Site Plan**").

B. The Riverwalk Center includes various proposed parcels of land as identified on the initial Site Plan. These include and shall be respectively referred to herein as the "**Office Parcels**," the "**Progressive Parcel**," the "**Retail and Restaurant Parcels**," all as currently depicted on the preliminary Site Plan. The Riverwalk Center is being developed by Riverwalk as an integrated office park and retail development.

C. Riverwalk, as Declarant, hereby desires to subject the Riverwalk Center and all Parcels therein to the terms and conditions of this Declaration. This Declaration will run with the Riverwalk Center, and any Party coming into interest in any portion of the Riverwalk Center shall be subject to the terms and conditions of this Declaration.

NOW, THEREFORE, Riverwalk, as Declarant, hereby declares the Riverwalk Center to be subject to and imposes upon and makes the Riverwalk Center subject to the following easements, covenants, restrictions and agreements:

1. **DEFINITIONS.**

The following terms shall have the meanings hereinafter set forth:

1.1. **Approving Party.** "**Approving Party**" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Declaration. Riverwalk shall be the Approving Party for the Riverwalk Center so long as it owns, either directly, indirectly or through common management or ownership, any Parcel within the Riverwalk Center. At the time that Riverwalk no longer owns a Parcel within the Riverwalk Center and is no longer acting as the Operator, Riverwalk shall assign its rights as Approving Party to the Party that then owns the greatest aggregate Floor Area within the Riverwalk Center, whether owned as a single Parcel or aggregated through ownership of multiple Parcels. At the time that such successor Approving Party (or any succeeding Approving Party no longer owns the Parcel(s) constituting the greatest Floor Area in Riverwalk Center, the rights as the Approving Party shall be assigned to the Party owning the then greatest Floor Area within the Riverwalk Center. In the event that the Party that owns the greatest aggregate Floor Area

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within the River Center does not accept assignment of the role of the Approving Party, then the Approving Party shall be elected by a majority of the owners of the Parcels at such time.

1.2. **Building.** "**Building**" shall mean any permanently enclosed structure placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

1.3. **Building Area.** "**Building Area**" shall mean the limited areas of the Riverwalk Center within which Buildings may be constructed, placed or located. Building Areas are designated on the Site Plan or any modification found in the final site plan as adopted by the Declarant and by the Governmental Authorities. One or more Buildings may be located within a Building Area.

1.4. **Common Area.** "**Common Area**" shall mean all areas within the exterior boundaries of the Riverwalk Center which are held for the common use and enjoyment of each and every Party, but shall not include (i) any Building and (ii) any Outside Sales Area (defined below), aprons, patios, vehicle parking areas (except those within a right-of-way) but shall include the Perpetual Access Drive (defined below), common driveways, common thoroughfares, common landscaping and related common improvements as constructed or reconstructed on any Parcel by Riverwalk.

1.5. **Constant Dollars.** "**Constant Dollars**" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "**Base Index Number**" shall be the level of the Index for the year this Declaration commences; the "**Current Index Number**" shall be the level of the Index for the year preceding the adjustment year; the "**Index**" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Party shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.6. **Floor Area.** "**Floor Area**" shall mean the aggregate of the actual number of square feet of space (i) contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls and space used for outdoor seating for customers of Restaurants and/or other food service businesses; provided, however, that the following areas shall not be included in such calculation: space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor; any space used solely for Building utilities or mechanical equipment. Within thirty (30) days after receipt of a request therefore by the Approving Party, the owner of the subject Parcel shall certify to the Approving Party the amount of Floor Area on the subject Parcel, as the case may be. If any owner of a Parcel in the Riverwalk Center causes an as-built survey to be prepared with respect to any portion of the Riverwalk Center, a copy of such survey shall be furnished to the Approving Party for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area shall be deemed to be the same as existed immediately prior to such period. Upon completion of such rebuilding, repairing, replacement or reconstruction, a new determination of Floor

Area shall promptly be made and distributed to the Approving Party and Operator.

1.7. Governmental Authorities. "**Governmental Authorities**" shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

1.8. Governmental Requirements. "**Governmental Requirements**" shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

1.9. Occupant. "**Occupant**" shall mean any Person from time to time entitled to the use and occupancy of any portion of a building in the Riverwalk Center under an ownership right or any lease, sublease, license, concession, or other similar agreement.

1.10. Operator. "**Operator**" shall mean the Person, if any, designated from time to time by the Approving Party to maintain and operate the Common Area of the Riverwalk Center for the benefits of the Parcel owners. The Person designated as Operator shall serve in such capacity until he resigns upon at least 60-days prior written notice, or is removed by the Approving Party upon no less than 60 days prior notice, or upon the vote of at least 60% of the Parcel owners, upon no less than 60 days prior notice. Riverwalk shall be the initial Operator, and Riverwalk hereby accepts such appointment. During any period an Operator is not designated, then each Party shall maintain and operate its own Parcel pursuant to the terms and conditions hereof.

1.11. Outside Sales Area. "**Outside Sales Area**" shall mean those areas, if any, on the Site Plan which from time to time may be used for sales, display and/or storage purposes; in accordance with Governmental Requirements; provided, however, with respect to any Outside Sales Area located outside of a Building Area, the Approving Party acknowledges that the actual location of such Outside Sales Area may vary from time to time, subject to the approval of the Approving Party. At no time shall an Outside Sales Area be considered part of the Common Area.

1.12. Parcel. "**Parcel**" shall mean any separate parcel of land that may be or has been separately created or subdivided as approved hereunder. The Office Parcels, the Progressive Parcel, and the Retail and Restaurant Parcels are sometimes separately referred to as a "Parcel" for the purposes of this Declaration.

1.13. Party. "**Party**" shall mean each signatory hereto and its respective successors and assigns during the period of such Person's fee ownership of any Parcel within the Riverwalk Center. A Party transferring all or any portion of its fee interest in the Riverwalk Center shall give notice to the Approving Party and Operator, if any, of such transfer and shall include in such notice at least the following information:

- a. The name and address of the new Party; and
- b. A copy of the legal description of the Parcel transferred to such Party.

Each Party shall be liable for the performance of all covenants, obligations and undertakings applicable to the Parcel or portion thereof owned by it that accrue during the period of such ownership, and such liability shall continue with respect to the Parcel transferred by such Party until the notice of transfer set forth above is given. Until such notice of transfer is given, the transferring Party shall (for the purpose of this Declaration only) be the transferee's agent. Once the notice of transfer is given, the

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transferring Party shall be released from all obligations pertaining to any Parcel transferred arising subsequent to the notice of transfer. For the purpose of this Section only, if the notice of transfer is given pursuant to the provisions of Section 8.4 the effective date of such notice shall be the date such notice is sent. Notwithstanding anything to the contrary, if a notice of transfer is given, any payment made by a Party to the transferor within thirty (30) days of such notice shall be deemed properly paid and the transferor and the transferee shall resolve any necessary adjustments and/or prorations regarding such payment between them.

If a Parcel is owned by more than one (1) Party, the Party or Parties sharing the ownership interest in such Parcel shall designate in writing one (1) Person to represent all owners of the Parcel and such designated Person shall be deemed the Person authorized to give consents and/or approvals, and join in the execution of amendments to the extent applicable as set forth in Section 8.8.5, pursuant to this Declaration for such Parcel.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is recorded against the transferred portion of the Riverwalk Center prior to receipt of such notice of transfer by the Party filing such lien.

1.14. Permittee. "**Permittee**" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Riverwalk Center. Persons engaged in civic, public, charitable or political activities within the Riverwalk Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- a. Exhibiting any placard, sign or notice.
- b. Distributing any circular, handbill, placard or booklet.
- c. Soliciting memberships or contributions for private, civic, public, charitable or political purposes.
- d. Parading, picketing or demonstrating.
- e. Failing to follow regulations established by the Parties relating to the use and operation of the Riverwalk Center.

1.15. Person. "**Person**" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority, as the context dictates.

1.16. (omitted)

1.17. Restaurant. "**Restaurant**" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant.

1.18. Utility Lines. "**Utility Lines**" shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface or storm water. "**Common Utility Lines**" shall mean (i) those Utility Lines that are designated as such by the Approving Party, and which are installed to provide the applicable service for the benefit of more than one (1) Party and all man-made

improvements therein serving the Riverwalk Center. "**Separate Utility Lines**" shall mean those Utility Lines that are installed to provide the applicable service for the benefit of one (1) Party and/or which are not Common Utility Lines. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line. For the purpose of this Declaration, any storm water detention or retention pond or basin within the Riverwalk Center shall be considered a Common Utility Line. Utility Lines installed pursuant to this Declaration shall only provide service necessary for the development and/or operation of the Riverwalk Center, unless otherwise required by the applicable Governmental Authority.

2. EASEMENTS.

2.1. Access, Ingress and Egress, Perpetual Access Drive.

Riverwalk, as Declarant, hereby grants, bargains, sells and conveys and imposes upon the Parcels within the Riverwalk Center, and makes the Riverwalk Center subject to, a non-exclusive perpetual easement, in common with the owners of all Parcels within the Riverwalk Center and others entitled to use the same, for the purpose of access, ingress and egress of pedestrian and vehicular traffic over and across those improved thoroughfares, approaches and driveways in the Riverwalk Center as identified on **Exhibit B** (or as actually approved, developed and constructed, if different), including the area identified as the "**Perpetual Access Drive**", as well as across the improved sidewalks (if any) immediately adjacent thereto (collectively, the "**Access Easement Area**"), provided, however, this grant of easement shall in no event be construed to create any rights to park motor vehicles upon any portion of the Perpetual Access Drive or the Access Easement Area. Furthermore, the rights granted in this Section 2.1.1 (or any rights granted in this Agreement) are subject to the requirements of Section 3.2.5 with respect to vehicle parking. Notwithstanding any other provisions set forth herein, for so long as Progressive Casualty Insurance Company owns the Progressive Parcel, no Party or Occupant (other than Progressive Casualty Insurance Company) shall utilize parking spaces on the Progressive Parcel, whether for employees or customers of another Parcel.

Riverwalk hereby acknowledges and represents to Progressive Casualty Insurance Company that the portion of the Access Easement Area immediately adjacent to the south boundary of the Progressive Parcel, as shown on **Exhibit B** (the "**Progressive Driveway**"), is hereby approved by Riverwalk.

The easement herein established shall be appurtenant to and for the benefit of the Parcels within the Riverwalk Center, and shall be binding on, enforceable against and burden each such Parcel as necessary. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration:

- (a) The owner of a Parcel, as a "**grantor**", reserves the right to close-off any portion of the Access Easement Area within its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such grantor's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of a Parcel, such grantor shall give written notice to the owner of the other Parcel, as "**grantee**", of the grantor's intention to do so, and shall attempt to coordinate such closing-off with such grantee so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;
- (b) Each grantor reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Parcel; and
- (c) The grantor reserves the right to temporarily erect or place barriers in and around areas on its Parcel which are being constructed and/or repaired in order to insure either safety of

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Persons or protection of property.

(d) Vehicles making deliveries to or pickups from a Party's Parcel shall not park on another Party's Parcel.

The right to use the Perpetual Access Drive and the Access Easement Area may be extended by each Party to the customers, employees, tenants, subtenants, suppliers, contractors, business invitees and other persons having contact with the activities being conducted on its Parcel, and then only in accordance with the terms and conditions hereof.

2.1.1. (omitted)

2.1.2. Fences and Barriers. No fence or other barrier shall be erected or permitted within or across the Perpetual Access Drive or Access Easement Area which would prevent or obstruct the passage of pedestrian or vehicular travel thereon; provided, however, that the foregoing shall not prohibit the temporary erection of barricades that are reasonably necessary for security and/or safety purposes in connection with the construction, reconstruction, repair and maintenance of improvements in the Riverwalk Center, it being agreed by the parties, however, that (a) all such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Perpetual Access Drive, (b) all such work shall be diligently prosecuted to completion and (c) during any such work reasonable adequate ingress and egress to and from the River Gate Drive and/or Bingham Junction Boulevard shall be maintained. This provision specifically does not prohibit the secured or fenced areas located within the Progressive Parcel as currently approved by the Governmental Authorities.

2.1.3. Curb Cuts. The Approving Party shall review and approve any and all curb cuts from any Parcel to the Perpetual Access Drive, River Gate Drive and/or Bingham Junction Boulevard (which curb cuts shall also be subject to approval of applicable Governmental Authorities, if necessary), and not more than the approved number of such curb cuts shall be constructed, maintained or used between the Perpetual Access Drive and a Parcel without consent of the Approving Party. Riverwalk, as the current Approving Party, hereby acknowledges to Progressive Casualty Insurance Company that it has reviewed the plans and specifications for the curb cut associated with the Progressive Driveway, and that such curb cut is approved.

2.1.4. Relocation Rights. The owner of the Riverwalk Parcel may, at its expense, relocate all or any portion of the Perpetual Access Drive, so long as the relocated portion provides each Parcel, with reasonably direct access to 7200 South, River Gate Drive and/or Bingham Junction Boulevard, with Governmental Approval, as the case may be. Notice of any such relocation shall be provided to the each grantee Party at least thirty (30) days prior to relocation of any portion of the Perpetual Access Drive.

2.1.5. Lighting of Perpetual Access Drive. The lighting for the Perpetual Access Drive shall be on from dusk until at least 11:00 PM and shall be controlled by the Approving Party. However, it is recognized that Occupants of the various Parcels within the Riverwalk Center may be open for business at different hours, and that a Party may wish to have the lighting for the Perpetual Access Drive be illuminated before or after the required time period.

In the event a Party desires an extension of such illumination period, such Party shall have the right, at any time, to require the lights for the Perpetual Access Drive be operating for the extended period requested, provided that such Party notifies the owner of the Riverwalk Parcel of such request not less than fifteen (15) days in advance. The requesting Party shall state the period during which it wishes such lights to be kept operating and shall pay to Operator a prepayment as follows:

(a) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower), as estimated by the owner of the Riverwalk Parcel; and

(b) If the period is thirty (30) days or longer, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as estimated by the owner of the Riverwalk Parcel, and the requesting Party shall renew such prepayment at the end of each thirty (30) day period.

In the event of a failure by the requesting Party to pay the estimated amount or renew a prepayment as required hereby, the Operator or Approving Party shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided, including the placement of a lien for nonpayment on the requesting Party's Parcel and foreclosing such lien in accordance with applicable law. Any such request for additional lighting may be withdrawn or terminated at any reasonable time by written notice from the requesting Party, and a new request or requests for changed hours of additional operation may reasonably be made from time to time.

2.2. Utilities.

2.2.1. Riverwalk, as Declarant, hereby grants and conveys to each owner of a Parcel, a non-exclusive, perpetual easements in, to, over, under, along and across those portions of the each burdened Parcel (exclusive of any portion located within Building Areas) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of Utility Lines serving the benefited Parcel(s). The initial location of any Utility Line shall be subject to the prior written approval of the initial owner Parcel to be burdened thereby. Such easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to a Party. The grantee of an easement hereunder shall provide to the Approving Party a copy of an as-built survey showing the location of such Utility Line. All Utility Lines shall be underground except:

- a. Ground mounted electrical transformers;
- b. As may be necessary during periods of construction, reconstruction, repair or temporary service;
- c. As may be required by Governmental Authorities;
- d. As may be required by the provider of such utility service;
- e. As may be attached to a Building (e.g. solar panels); and
- f. Fire hydrants.

At least thirty (30) days prior to utilizing the easement granted herein, the grantee of an easement hereunder shall provide the owner of the burdened Parcel with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work. Prior to commencing any work on a grantor's Parcel, including any emergency work, such grantee shall provide to the owner of the burdened Parcel evidence of insurance coverage as required by Section 6.

2.2.2. Any Party and/or Parties electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and all subsequent maintenance, relocation or abandonment of the Separate Utility Line. The Separate Utility Line shall be maintained in a safe, clean and good state of repair and condition. The grantee(s) shall perform such work in compliance with all Governmental Requirements, as quickly as reasonably possible, and shall back fill and adequately compact the disturbed area to prevent voids and restore the surface to a condition equal to or better than that existing before such work was commenced. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee(s) shall provide the grantor with at least fifteen (15) days prior notice before commencement of any work. The grantee(s) of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

Except as may otherwise be agreed, the Parties electing to install a Common Utility Line shall obtain all necessary permits and approvals and shall pay all costs and expenses with respect to the initial construction of such Common Utility Line. Once constructed, Operator shall maintain, replace and/or relocate the Common Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. All costs and expenses incurred by Operator with respect to any Common Utility Line shall be considered part of Common Area Maintenance Costs (defined in **Section 4.3.1**) and shall be payable pursuant to Section. If no Operator is designated, then the Approving Party shall maintain the Common Utility Lines and or following the expiration of this Declaration, each Party benefiting from a particular Common Utility Line ("**Cooperating Party**") shall have the right to maintain, repair or replace such Common Utility Line without submission of a Budget or estimate of expenditures, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than Twenty Thousand Dollars (\$20,000) in Constant Dollars for such work (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties of such estimate, and the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders, and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to have the work performed shall have the right to let a contract for such work to a contractor of its choosing. After any costs (regardless of amount) for maintaining, repairing or replacing a Common Utility Line has been incurred by an electing Cooperating Party, the Person incurring such costs, may send a statement of such costs, increased by an amount equal to the Administration Fee (defined in Section 4.3.1), together with a copy of any invoice reflecting a charge exceeding \$500.00, to each Cooperating Party benefiting from such Common Utility Line. Within thirty (30) days after receipt of the statement of costs incurred in accordance with the procedures set forth above, each Cooperating Party shall pay its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if no separate cost sharing agreement was made, then in accordance with the sharing of Common Area Maintenance Costs. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work. Notwithstanding any other provisions set forth herein, a Party shall not be required to pay any costs associated with a Common Utility Line unless such Party is utilizing such Common Utility Line.

2.2.3 As of the date of this Declaration, Riverwalk has agreed to install or has previously installed the following items as Common Utility Lines:

a. Storm water collection, transmission and retention system, including catch basins, underground piping, conduits and mains within the Riverwalk Center.

2.2.4 Riverwalk, as Declarant, hereby grants and conveys to the owner of each Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from each benefited Parcel over, upon and across the Common Area of each burdened Parcel, upon the following conditions and terms:

a. The surface elevations for the Riverwalk Center and the surface water drainage/retention system serving the Riverwalk Center shall be initially constructed in strict conformance with the plans and specifications approved by the Approving Party and Governmental Authorities; and

b. No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would materially increase the velocity, volume or flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area.

c. Each grantor shall have the right to relocate any Utility Line on its Parcel upon thirty (30) days prior written notice to the grantee(s), provided that such relocation:

(i) Shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;

(ii) Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

(iii) Shall be performed without cost or expense to the grantee;

(iv) Shall be completed using materials and design standards which equal or exceed those originally used; and

(v) Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

(vi) Nothing stated herein shall prevent a Parcel owner from relocating a Separate Utility Line serving such Parcel which is located within its Parcel.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey to all grantees, shall be at the grantor's expense and shall be accomplished as soon as possible following completion of such relocation.

2.2.5 In the event a Party fails to perform its obligations under Section 2.2.4, any affected Party shall have the right to claim a default pursuant to Section 8.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision shall survive the termination of this Declaration.

2.3 (omitted).

3. CONSTRUCTION

3.1. General Requirements.

3.1.1. Each Party agrees that all construction activities performed or authorized by it within the Riverwalk Center shall be performed in compliance with all Governmental Requirements and so as to not interfere with any business being operated on another Parcel. The Approving Party for the Riverwalk Parcel shall from time to time identify approved construction access routes to each Parcel so as to not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner.

3.1.2. Each Party further agrees that any construction activities performed or authorized by it shall not:

- a. Cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel.
- b. Unreasonably interfere with construction work being performed on any other part of the Riverwalk Center.
- c. Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Riverwalk Center by any other Party or its Permittees.
- d. Cause any Building located on another Parcel to be in violation of any Governmental Requirements.

To the extent a Party (or its Occupant) is constructing improvements on its Parcel under this Section 3.1.2 ("**Constructing Party**") and causes or allows construction debris or soils to migrate or be brought onto another Party's Parcel, or otherwise damages another Party's Parcel, the Constructing Party, at its sole cost and expense, shall immediately (and consistently, to the extent the problem becomes a chronic issue) cause such debris and soils to be cleaned up or such damage to be repaired. If any portion of the Common Area of the Riverwalk Center has been developed, such clean up shall be in accordance with the minimum standards of maintenance set forth in this Declaration.

3.1.3. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 6.

3.1.4. In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Party reserves the right, at its expense, to create a temporary staging and/or storage area on its Parcel at such location as will not unreasonably interfere with access between such Parcel and the other areas of the Riverwalk Center. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Parcel, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access

points located upon the constructing Party's Parcel; provided however, that if no direct public access is available to the Parcel of the Party performing such construction then any of the designated drives may be used for such access. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged area to a condition equal to or better than that existing prior to commencement of such work.

3.1.5. The Parties hereby grant to each other and their respective contractors, materialmen and laborers a temporary license for access and/or use over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however, that such license shall be in effect only during such periods of time when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall identify the area of use. Each grantee physically using a portion of the grantor's Parcel in connection with the construction and/or maintenance of the grantee's Parcel shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 6, shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the grantor's Parcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with such construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Parcel.

3.2. **Common Area** The Parties have agreed that the Common Area shall be constructed as shown on the Site Plan, or as actually determined by Approving Party and any designated Common Utility Lines specified in Section 1.18 shall be installed as part of the initial Riverwalk Center development; provided, however, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan or as actually approved and constructed. Notwithstanding anything contained herein to the contrary, any retaining walls required for the use or development of the Riverwalk Center shall be considered Common Area improvements that shall be maintained by each Party or by the Operator, as provided herein.

Contemporaneously with the construction of a Building upon its Parcel, the constructing Party shall cause the Common Area on its Parcel to be substantially completed no later than the day the first Occupant of such Parcel opens for business with the public. Such work shall be done in accordance with Governmental Requirements, in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this Declaration.

3.2.1. All exterior lighting shall be part of the submission of the Plans by Party seeking approval to the Approving Party, and shall be subject to the approval of Approving Party and the applicable Governmental Authority. The type and design of the Common Area light standards shall be approved by the Approving Party. Riverwalk hereby acknowledges that it has reviewed and approved the Plans associated with the exterior lighting for the Progressive Parcel, subject to any Governmental Requirements.

3.2.2. (omitted)

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3.2.3. All sidewalks and pedestrian aisles shall be concrete or other materials approved by the Approving Party as part of the approval; the automobile parking areas, driveways, and access roads shall be designed in conformity with the recommendations of a licensed soils engineer, which design shall require the installation of a suitable base and surfacing with an asphaltic concrete or concrete-wearing material.

3.2.4. Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Party.

3.2.5. The parking area on each separate Parcel shall be self-contained as determined without reliance on parking spaces that may be available on another Parcel or other portion of the Riverwalk Center, in order to comply with the greater of Governmental Requirements or the following minimum requirements:

A. The lesser of (i) four (4) parking spaces or (ii) the number of spaces required by Governmental Authorities, for each one thousand (1,000) square feet (plus excess portion thereof) of Floor Area, plus any Restaurant parking requirements set forth below.

B. If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.

C. For each single Restaurant that has less than five thousand (5,000) square feet of Floor Area, then the lesser of (i) five (5) parking spaces or (ii) the number of spaces required by Governmental Authorities, for each one thousand (1,000) square feet (plus excess portion thereof) of Floor Area devoted to such use.

D. For each single Restaurant that has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then the lesser of (i) ten (10) parking spaces or (ii) the number of spaces required by Governmental Authorities, for each one thousand (1,000) square feet (plus excess portion thereof) of Floor Area devoted to such use.

E. For each single Restaurant that has seven thousand (7,000) square feet or more of Floor Area, then the lesser of (i) fifteen (15) parking spaces or (ii) the number of spaces required by Governmental Authorities, for each one thousand (1,000) square feet (plus excess portion thereof) of Floor Area devoted to such use.

F. Restriction on Parking Structures. Notwithstanding anything stated in this Declaration to the contrary, except for parking structures completely contained within the Building Area, there shall be no multi-level parking structures permitted on the Parcel on River Gate Drive adjacent to the southerly boundary of the Progressive Parcel unless approved by the Party owning the Progressive Parcel, in its sole discretion.

G. Setback Requirements. In addition to the restrictions set forth in Section E above, any Building on any Parcel with frontage on River Gate Drive which is adjacent to the south boundary of the Progressive Parcel that exceeds one story in height shall have at least that same or greater setback off of River Gate Drive as the Progressive Parcel, as approved by Governmental Authorities or as actually completed.

Each Party shall use its reasonable efforts to cause the employees of the Occupants of its Parcel

to park their vehicles only on such Parcel. If an Occupant operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (C), (D) and (E) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth above.

In the event of a condemnation of part of a Parcel or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Parcel below that which is required herein, the Party whose Parcel is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground-level parking spaces in order to comply with the parking requirements set forth in this Declaration. If such compliance is not reasonably possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located on its Parcel. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirements set forth above are satisfied.

Notwithstanding the foregoing Section 3.2.5, in the event that any use of the Building Area on the Riverwalk Parcel requires that the parking ratio set forth in Paragraph (A)-(E) above be reduced below the required amount then, so long as such reduction complies with all Governmental Requirements, the Approving Party may elect to have the parking ratio set forth in Paragraph (A)-(E) above reduced.

Temporary unavailability of parking spaces caused by uses or promotions permitted under this Declaration shall not result in or be deemed a violation of Section 3.2.5.

3.2.6. No Party shall make changes to the improved Common Area, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification or alteration in the portion of the Common Area on its Parcel, including the installation of convenience facilities such as mailboxes, public telephones, cart corrals, benches, bicycle racks, directional and/or parking information signs, provided that:

- a. The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Riverwalk Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan.
- b. There shall be maintained at all times within such Common Area a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2.5; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Parcel shall be eliminated.
- c. No Governmental Requirements shall be violated as a result of such action. Each Governmental Requirement applicable to such modifications shall be satisfied by the Party performing the same. Each action shall not result in any other Party being in violation of any Governmental Requirements.

d. No change shall be made in the access points between the Common Area and the adjacent public streets; provided, however, that additional access points may be created with the written approval of the Approving Party.

e. At least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to the Approving Party copies of the plans therefore.

The provisions of Section 3.2 do not apply to any changes, modifications or alterations of Common Area located within Building Areas. By way of example, in the event that a Party's use of a Building Area makes it reasonably necessary to modify adjacent portions of the Common Area to effect the use of such Building Area for a Building (e.g. an existing pedestrian sidewalk located within such Building Area is to be relocated partially within a driveway) then such Party may modify such Common Area so long as vehicular traffic (as it relates to the remainder of the Riverwalk Center) is not unreasonably restricted or hindered and all parking fields and vehicular traffic lanes shall remain generally as shown on the Site Plan.

3.3. Building Improvements

3.3.1. Building(s) will be located within the Building Areas designated on the Site Plan, as finally completed and platted. While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Parcel, each Party agrees that once it has commenced construction of a Building, such Building shall be completed within a reasonable time. Riverwalk, as Approving Party, hereby acknowledges its approval of the architectural theme, proposed elevations and all Plans of the Progressive Parcel as of the date of this Declaration. Any modifications to the Progressive Parcel's Plans which would require the approval of Governmental Authorities shall be subject to resubmission to Declarant for approval pursuant to Section 3.3.2.

3.3.2. Each Party desiring to construct improvements on a Parcel shall submit for approval to the Approving Party for the Riverwalk Parcel a set of site plans and colored elevations which demonstrate compliance with these Declarations and the requirements Governmental Authorities ("Plans") covering the initial construction of each Building and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof; provided, however, any Building to be constructed by Riverwalk while acting as Approving Party shall not be required to submit Plans. The approval of Plans for the construction, exterior remodeling or reconstruction of any structure, building, or improvement in the Riverwalk Center shall be subject to approval of the Approving Party in its sole discretion.

The Approving party shall have 30 days from the date of submission to review the Plans. If the Approving Party for the Riverwalk Parcel should reject the Plans for any reason, the submitting Party and such Approving Party shall mutually consult to establish approved Plans for the proposed work. Such Approving Party shall not unreasonably withhold approval of, or recommend changes in the Plans if the plans conform to requirements of the Declaration and applicable Government Requirements. In no event shall such Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of any Buildings on its Parcel. Approval of Plans by said Approving Party shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with Governmental Requirements or these Declarations. No material deviation shall be made from the approved Plans without the written consent of the Approving Party and the applicable Governmental Authorities.

3.3.3. (omitted)

3.3.4. (omitted)

3.3.5. No Building on the Office Parcels shall exceed four stories without the prior written approval of the Approving Party. No Building on the Retail and Restaurant Parcels shall exceed one (1) story unless otherwise approved by the Approving Party in its sole discretion.

Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment (defined below) on the top of the Building on its Parcel which may extend above the height limits established above; provided, however, such Communications Equipment shall be set back from the front of the Building or screened in order to reduce visibility thereof by customers. The location of all Communications Equipment shall be in the sole discretion of Approving Party, in connection with Plan approval set forth in 3.3.2. As used herein, the phrase "**Communications Equipment**" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

3.4. (omitted)

3.5. Liens

3.5.1. In the event any mechanic's lien is recorded against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien agrees to defend, protect, indemnify and hold harmless each other Party and its Parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien. The Party permitting or causing such lien to be recorded shall have the right to contest the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly, but within fifteen (15) days after the entry of a final judgment, pay in full the required amount, together with any interest, penalty, cost, or other charge necessary to release such lien of record.

3.5.2. Upon the request of the Party whose Parcel is subject to such lien, the Party permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record with respect to such Parcel by posting a bond or other security as shall be required by law to obtain such release and discharge. In the event the laws of the State within which the Riverwalk Center is located do not provide for a method to release real estate from a lien claim, then the Party permitting or causing such lien shall deposit with the Party whose Parcel is subject to such lien security (cash or other reasonably acceptable substitution) equal to 150% of the amount of the lien. The security shall be held until the contest provisions set forth in Section 3.5.1 are completed and the lien released; provided, however, that if either the lien is not contested and then released pursuant to Section 3.5.1 above, or the Party permitting or causing such lien elects to satisfy the claim, then the security shall be used to pay the lien claim and obtain the release of record.

4. MAINTENANCE AND REPAIR

4.1. Utility Lines. Utility Lines shall be maintained as provided in Section 4.3.

4.2. Common Areas

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4.2.1. Subject to the joint operation and maintenance responsibilities which may be assumed by Operator as set forth in Section 4.3, and independent obligations, if any, relating to Utility Lines and/or signs, each Party shall operate, maintain, and to the extent necessary due to ordinary wear and tear, repair and replace the Common Area improvements on its Parcel in a sightly, safe condition and good state of repair at such Party's sole cost and expense. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of operation and maintenance for the improved Common Area shall be comparable to the standard of operation and maintenance followed in other first class retail developments of comparable size in the Salt Lake City metropolitan area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable Governmental Requirements, and the provisions of this Declaration. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Riverwalk Center as a whole. Such operation and maintenance obligation shall include but not be limited to the following:

A. Drives and Access Easement Area. Maintaining, repairing and replacing all the Perpetual Access Drive, Access Easement Area and related approaches, paved surfaces, curbs and sidewalks in a smooth and evenly covered condition, including, without limitation, (i) replacement of base, skin patch, resurfacing and, when necessary to restripe the travel lanes, resealing; (ii) restriping drive lanes as necessary to identify traffic direction designations, fire lanes, and pedestrian cross-walks and (iii) removal of ice, and when there is an accumulation of two (2) inches or more on surface, snow.

B. Debris and Refuse. Periodically removing papers, debris, filth, and refuse, including vacuuming and broom-sweeping of paved to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.

C. Directional Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.

D. Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Area pursuant to **Section 5.6**; provided however, exterior Building lighting fixtures, including any lighting fixtures associated with a canopy or other architectural feature forming a part of such Building, shall be considered a part of such Building, and the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Party upon whose Parcel such fixtures are located.

E. Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed-free; maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings; providing water for landscape irrigation through a properly maintained irrigation system, including performing any seasonal (start up and/or winterization) maintenance thereto, and any modifications to such system to satisfy governmental water allocation or emergency requirements. If any Party or Occupant requires "special" landscaping (i.e. flowers, shrubs, trees, etc.) beyond the standard landscaping requirements for the remainder of the Riverwalk Center, or if landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be

borne solely by such Party or Occupant, as the case may be, and shall not be included in Common Area Maintenance Costs.

F. Obstructions. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

G. Sidewalks. Maintaining, cleaning and replacing sidewalks that are immediately adjacent to the Perpetual Access Drive and Access Easement Area, but do not include those sidewalks immediately adjacent to Buildings. Sidewalks shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the sidewalks; and cleared of ice, and when there is an accumulation of 2 inches or more on surface, snow.

H. Retaining Walls. Maintaining, cleaning and replacing any retaining walls that provide support for landscaping or site improvements including, without limitation, retaining walls located within the Conservation Easement Area.

I. Security Measures. Upon the vote of 60% of the Owners of all Parcels, providing security measures, including personnel, for the Riverwalk Project. Notwithstanding the previous sentence, for so long as Progressive Casualty Insurance Company owns the Progressive Parcel, Progressive Casualty Insurance Company may opt-out of any security measures for the Riverwalk Project and shall not be subject to payment for any costs associated therewith.

J. Traffic. Supervising traffic at public entrances and exits to the Parcel as conditions reasonably require in order to maintain an orderly and proper traffic flow.

Notwithstanding anything herein to the contrary, each Party shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Parcel: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; any refuse, compactor or dumpster area.

4.2.2. Subject to the provisions of Section 4.3 regarding Common Utility Lines, and Section 5.95.10 regarding sign structures utilized by more than one Party, if any portion of the Common Area is damaged or destroyed by any cause whatsoever other than ordinary wear and tear, whether insured or uninsured, during the term of this Declaration, the Party upon whose Parcel such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided, however, that no Party shall be required to expend more than \$150,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for such Party's election of deductibles or self-insurance, which amount such Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require the Party upon whose Parcel such Common Area is located to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$150,000.00. Except to the extent limited by Section 5.3, if such damage or destruction of Common Area on a Parcel is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages. Notwithstanding any other provisions set forth herein, in the event a Party (or its contractors) is developing a Parcel and damage is caused to a Common Area as a result of such development, the owner of the Parcel being developed shall be fully responsible to repair such damage, regardless of the location of the damage (and without the \$150,000 payment requirement to the owner of the Common Area as set

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forth above).

4.3. Joint Maintenance.

4.3.1. Prior to Operator commencing any operation and/or maintenance duties, Operator shall obtain, and thereafter maintain during the period of such operation and/or maintenance performance, the insurance required by Section 6. Commencing on the earlier of thirty (30) days prior to the date specified by the Occupant of the Riverwalk Parcel that it intends to open for business with the general public, or the date the Approving Party designates in writing, Operator shall operate and maintain the (i) Common Area of the Riverwalk Center in accordance with the requirements of Section 4.2.1, exclusive of any "capital improvements" which shall be the responsibility of the Party owning the affected Parcel as set forth in Sections 4.2.1 and 0 above, (ii) Common Utility Lines and any retaining walls located within the Conservation Easement Area or which otherwise provide support to any other Common Area improvements, and (iii) the signs pursuant to Section 5.9. Notwithstanding the foregoing, at the direction of the Approving Party for the Riverwalk Parcel, the operation and maintenance of each Parcel shall be the sole responsibility of the Party owning such Parcel and shall be conducted at such Party's sole cost and expense.

At least 30 days prior to any major work in the parking lots or drive areas, Operator shall advise the Approving Party of the scope thereof, and the proposed commencement and completion dates. Operator shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Area ("**Common Area Maintenance Costs**") and for the performance of other obligations imposed on Operator pursuant to this Declaration, and shall promptly pay all such costs when incurred. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Approving Party an estimated budget for the balance of the current calendar year containing the information required by Section 4.3.2, and each Party agrees to pay its share of Common Area Maintenance Costs actually incurred during the balance of such year, plus the Administration Fee (defined below), in accordance with Section 4.3.3. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area. Each Party hereby grants to Operator, its agents, contractors and employees, a license to enter upon its Parcel to discharge Operator's duties to operate, maintain and repair the Common Area. Notwithstanding anything to the contrary, Common Area Maintenance Costs shall not include:

- A. Any late charges or fees; any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation by Operator or anyone else relating to the Riverwalk Center.
- B. Any charge for electricity for Building accent lighting or architectural features, or any Building security lighting. Also, any charge for electricity to a Party that separately pays the cost of power to illuminate the Common Area on its Parcel.
- C. Any charge for water to a Party that separately pays the cost of water for irrigating the landscaping upon its Parcel.
- D. Any costs for promotional, marketing, seasonal or holiday events of any type including, without limitation, costs of promotional equipment, banners, decorations and/or lighting, or the cost of set up, take down or storing any of the foregoing.
- E. Any costs to clean up or repair the Common Area resulting from any promotional, marketing, seasonal or holiday activities, or from construction, maintenance or replacement of a Party's Buildings.

F. Any costs associated with trash and/or garbage removal from a Party's Building, such removal obligation being the responsibility of the Party owning the Building.

G. Any costs resulting from or arising out of the repair or replacement of items actually covered and recovered by warranties or guaranties including, but not limited to, site improvements, signs, trees, plants or other landscaping.

H. Other than for a resurfacing, resealing and restriping of the Perpetual Access Drive, Access Easement Area and related thoroughfares areas which are considered maintenance items, any cost for replacement of base for drive and parking areas, such replacement being a "capital improvement" which is the responsibility of the Party owning the Parcel pursuant to the provisions of Sections 4.2.1 and 0.

I. Any costs relating to the items referenced in the last paragraph of Section 4.2.1, which items shall remain the responsibility of the Party owning the affected Parcel.

J. Any matters covered by Section 4.4, which items shall remain the responsibility of the Party owning the affected Parcel.

K. Real property taxes and assessments on the Common Area, except that real estate taxes attributable to any Parcel area containing a Common Utility Line detention pond or basis may be included.

L. Insurance costs and/or premiums regardless of whether any such insurance is required by this Declaration.

M. Operator's profit, administrative and overhead costs including, but not limited to: office space, equipment and utilities; legal fees and/or costs; accounting and administrative service;; premiums relating to bonding over mechanic's liens; and costs relating to hiring, training, screening, drug testing and/or background checks of personnel.

N. Entertainment, transportation, meals and lodging of anyone.

O. Any fee, assessment or charge for fire hydrants to a Party that separately pays such kind of imposition for fire hydrants located on its Parcel.

P. Any costs, fees expenses and/or adjustments to any of the foregoing submitted more than three (3) years after the date incurred by Operator.

Q. The cost of any "capital improvements" since such work is not the responsibility of Operator but the responsibility of the Owner of each Parcel pursuant to **Section 4.2.1** and **Section 0**.

In lieu of Operator's profit, administrative charges, all indirect and/or other direct costs, and overhead expenses, Operator shall be permitted to charge an amount ("**Administration Fee**") computed by multiplying Common Area Maintenance Costs by ten percent (10%). If any of Operator's personnel at the Riverwalk Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties. The cost of work performed by Operator's personnel and/or affiliates that is includable in Common Area Maintenance Costs shall be charged at such individual's normal billable hourly basis, including allocated overhead and benefits; provided, however, that the total rate charged for such individual shall not exceed

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the rate charged for such work by competitive companies furnishing similar work in the metropolitan area in which the Riverwalk Center is located, it being agreed that this provision shall be construed strictly against Operator.

4.3.2. Operator shall submit to the Approving Party an estimated budget ("**Budget**") for Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. In the event an Approving Party reasonably believes the charge for a particular function is excessive, such Approving Party shall notify Operator of such belief, and thereupon Operator shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder as agreed by the Approving Party shall be utilized as soon as the contract with the existing provider can be terminated without penalty. The Budget shall be in a form and content reasonably acceptable to the Approving Party and shall identify separate cost estimates for at least the categories specified under **Section 4.2.1**, plus:

- A. The Administration Fee.
- B. Rental fees or purchase price of equipment and supplies used in maintaining, operating or repairing the Common Area.
- C. Credit for any depreciation or trade-in allowance applicable to items purchased for Common Area purposes.
- D. Maintenance of the Pylon Sign.
- E. Maintenance of any Common Utility Line (but only in the event that such Party is utilizing the Common Utility Line).

If an item of maintenance is to be accomplished in phases over a period of calendar years during the term of this Declaration, such as an overlay of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to the applicable calendar year (including the portion of the Common Area affected) and shall note the anticipated cost and timing (indicating the portion of the Common Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties approving the same, or their successors or assigns, as the case may be, notwithstanding that when such work is performed a Party may not then be participating in the joint maintenance of the Common Area.

If a Budget for any calendar year is not approved by the Approving Party by December 1st of the preceding calendar year, Operator shall have the right, by written notice given prior to December 10th of such preceding calendar year, to either (i) terminate its operation and maintenance obligation with respect to the Common Area as of the following March 31st or (ii) to establish a Budget that is equal to the previous Budget, plus three percent (3%) until a final Budget is approved by the Approving Party. During the period from January 1st to March 31st, such Approving Party shall pay its share of the operation and maintenance of the Common Area pursuant to Section 4.3. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of a Party's right to audit and/or contest, challenge or dispute the Reconciliation (defined below).

Operator shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to Persons or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the

emergency action exceeds \$25,000.00, then Operator shall submit a supplemental billing to each Party, together with evidence supporting such cost, and each Party shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of Common Area Maintenance Costs for that year.

Each Party shall pay its share of the Common Area Maintenance Costs, together with the Administration Fee. Effective immediately, each Party's share of the Common Area Maintenance Costs shall be a percentage the numerator of which shall be the Floor Area of the Building on the Party's Parcel and the denominator of which shall be the total Floor Area of all Buildings shown on **Exhibit "B"**, which Floor Area may change upon actual construction of the Buildings located on the Parcels; provided that until the Buildings are actually 80% constructed, the Common Area Maintenance Costs and the Administration Fee shall be calculated as if the Buildings were 80% constructed (after 80% of the Buildings are actually constructed, then such percentage shall increase with the percentage of Buildings actually constructed until it reaches 100%). Each Party shall pay to Operator in equal monthly payments, in advance, the share of Common Area Maintenance Costs and the Administration Fee attributable to such Party's Parcel based either upon the amount set forth in the approved Budget or, if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for such Party for the prior year plus three percent (3%).

Within ninety (90) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person setting forth the actual Common Area Maintenance Costs paid by Operator for the operation and maintenance of the Common Area (such statement and supporting data are collectively called the "**Reconciliation**"), the Administration Fee, and the share of the aggregate thereof that is attributable to each Party's Parcel. The Reconciliation shall separately identify cost categories specified in **Sections 4.2.1** and **4.3.2** and shall be in a form reasonably acceptable to the Approving Party. If the amount paid with respect to a Parcel for such calendar year shall have exceeded the share allocable to such Parcel, Operator shall refund by check the excess to the Party owning such Parcel at the time the Reconciliation is delivered, or if the amount paid with respect to a Parcel for such calendar year shall be less than the share allocable to such Parcel, the Party owning such Parcel at the time such Reconciliation is delivered shall pay the balance of such Party's share to Operator within sixty (60) days after receipt of such Reconciliation, less any amounts disputed in writing, it being understood and agreed that the 60-day period only establishes the period for payment and is not to be construed as an acceptance of the Reconciliation. If Operator does not timely submit the Reconciliation, then such Party's payment period shall be extended an additional 60 days for a total of 120 days after receipt of the Reconciliation. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus Interest, against payments for Common Area Maintenance Costs and Administration Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year Operator resigns or is replaced, the replacement Operator shall be responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year; in addition for a period of sixty (60) days after a substitution of Operator is made, any payment made by a Party to the prior Operator shall be deemed properly paid, and the old and new Operators shall resolve any necessary adjustments and/or proration regarding such payments between themselves.

Within 120 days after the date of receipt of Reconciliation, the Approving Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Reconciliation. An Approving Party shall notify Operator of such Party's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of Common Area Maintenance Costs, the Administration Fee or any allocation thereof to a particular Parcel, the

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auditing Approving Party shall provide Operator with a copy of the audit, and an appropriate adjustment shall be made forthwith. Notwithstanding anything to the contrary, the approval of a prior Reconciliation, or any line item comprising a part thereof, shall not be a waiver of an Approving Party's right to challenge subsequent Reconciliations regarding such line item. The cost of any audit shall be assumed by the auditing Approving Party unless such Party shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Operator as such Approving Party's share for the applicable calendar year, in which case Operator shall pay the cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Approving Party shall have the right to offset the refund claimed, plus Interest, from the date Operator receives the audit, plus costs of the audit if appropriate, against subsequent payments due Operator; provided, however, Operator shall retain the right to dispute the results of such audit for a period of six (6) months following receipt of such audit, and Operator's election not to contest the results of such audit during the 6-month period shall be deemed acceptance of such audit.

4.3.3. (omitted)

4.3.4 Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Common Area and the performance of other functions expressly required of Operator by this Declaration, and if any Parcel shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

4.3.5 The Approving Party shall have the right, upon giving not less than sixty (60) days written notice to Operator, to take-over and assume the operation and maintenance of the Riverwalk Center provided that such Approving Party have the qualifications and licenses to act as a commercial property manager under applicable law. Upon the effective date of such take-over and assumption, the Operator shall be released from the obligations as Operator.

4.3.6 (omitted)

4.3.7 (omitted)

4.4 Buildings.

4.4.1 After completion of construction of each such improvement on its Parcel, each Party covenants and agrees to maintain and keep the Buildings, the areas referred to in the last paragraph of **Section 4.2.1**, in first-class condition and state of repair, in compliance with all Governmental Requirements, and in compliance with the provisions of this Declaration, including either the Theme or the exterior architectural concept approved for such Building by the Approving Party. Each Party further agrees to store all trash and garbage from its Buildings in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage. Exterior Building lighting fixtures, including any light fixtures associated with a canopy or other architectural feature forming a part of such Building, shall be maintained, replaced and repaired as part of Building maintenance.

4.4.2 In the event any of the Buildings in the Riverwalk Center are damaged by fire or other casualty (whether insured or not), the Party upon whose Parcel such Building is located shall, subject to

Governmental Requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement Building is erected. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one (1) of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative such Party elects.

5. IMPOSITION OF COVENANTS, RESTRICTIONS AND CONDITIONS.

This Declaration is not intended to, and does not, create or impose any obligation on a Party to operate, or continuously operate, a business or any particular business at the Riverwalk Center or on any Parcel. Nonetheless, the following covenants, restrictions and conditions are hereby declared and imposed upon the Riverwalk Center as indicated, and such Parcels are hereby subject to those of the following as specified:

5.1 The Riverwalk Center shall be used only for any lawful purpose (except as restricted herein).

5.2 No use shall be permitted in the Riverwalk Center which is inconsistent with the operation of a first-class development. Without limiting the generality of the foregoing, the following uses shall not be permitted within the Riverwalk Center:

- A. Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Riverwalk Center.
- B. An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- C. Any "second hand" store, "surplus" store, or pawn shop.
- D. Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- E. Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.
- F. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- G. Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in

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retail Riverwalk Centers in the metropolitan area where the Riverwalk Center is located.

H. Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.

I. Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.

J. Any mortuary or funeral home.

K. Any establishment selling or exhibiting "obscene" material.

L. Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.

M. Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall.

N. With respect to the Restaurant and Retail Parcels, any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Riverwalk Center.

O. Any gambling facility, bingo hall or similar wagering operation.

P. No billboards.

5.3 No Party shall use, or permit the use of, Hazardous Materials on, about, under or in its Parcel, or the balance of the Riverwalk Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this Section 5.3, the term (i) "**Hazardous Materials**" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "**Environmental Laws**" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations

which relate to or deal with human health or the environment, all as may be amended from time to time.

5.4 No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided, however, the foregoing prohibition shall not be applicable to:

- A. the storage of shopping carts in designated areas approved by the Approving party;
- B. the installation of an "ATM" banking facility within an exterior wall of any Building;
- C. the seasonal display and sale of bedding plants on the sidewalk in front of any Building located on the Riverwalk Parcel, the size and location to be reasonably approved by the Operator;
- D. the placement of bicycle racks and landscaping planters on the sidewalk in front of any Building, the size and location to be reasonably approved by the Operator;
- E. the placement of bollards on the sidewalk in front of any Building;
- F. temporary Riverwalk Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Party;
- G. any exterior recycling center or containers required by law, or approved by Approving Party, the location of which shall be subject to the approval of the Approving Party;
- H. outdoor seating shown on the Site Plan or as approved by Approving Party; or
- I. any designated outside sales area approved by Approving Party.

The foregoing restrictions may be waived in writing by the Approving Party at its sole and arbitrary discretion.

5.5 (omitted)

5.6 (omitted)

5.7 Common Area Lighting. After completion of the Common Area lighting system on its Parcel, each Party hereby covenants and agrees to keep its Parcel fully illuminated from dusk to at least 11:00 p.m. unless the Approving Party agrees upon a different time. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this Declaration, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel.

5.8 Trash Storage. The Parties agree to store all trash and garbage on their Parcel in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

5.9 Freestanding Signs and Sign Panels. No freestanding sign shall be permitted within the Riverwalk Center unless constructed in one of the specific areas designated on the Site Plan or as otherwise approved in advance by the Approving Party, and only one (1) such sign structure may be located in each sign area. If a sign area is no longer available for use because of condemnation or

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Governmental Requirements, a replacement sign area may be approved by the Approving Party, subject to the consent, which shall not be unreasonably withheld, of the Party owning the Parcel to be burdened by the replacement sign area location. Each sign structure at the Riverwalk Center shall be utilized as follows:

"Riverwalk Pylon Sign": The design criteria for the sign structure to be located in the areas designated as **"Pylon Sign"** on the Site Plan. Riverwalk shall have the right to attach panels to each side of each Pylon identifying the Riverwalk Center in the top or superior position on the sign structure. Other identification panels for Occupants of the Riverwalk Center shall be provided at the sole discretion of the Approving Party based on space and availability. The size, design and placement of all such panels shall be as determined by the Approving Party and, subject to Governmental Requirements.

Once constructed, Operator shall maintain each of the foregoing Pylon Sign structure as originally constructed and such costs (including cost of providing power) shall be included in Common Area Maintenance Costs; provided, however, if there is no Operator, then such maintenance shall be performed by a Person designated by the majority of Parties entitled to place panels on the sign structure and all costs (including cost of providing power) expended for such purpose shall be separately billed to each Party utilizing the sign based on the pro rata size of the identification panel area allocated to each.

Each Party having an identification panel shall cause the identification panel (including any backlit lighting) of its Occupant attached to or forming a part of the sign structure to be maintained at its sole cost and expense pursuant to Governmental Requirements, in a safe condition and in a good state of repair. In the event a Party elects not to attach an identification panel to the sign structure when initially constructed, but later decides to have its Occupant's identification panel attached thereto, then the Party making such later decision shall pay all costs, regardless of nature or origin, necessary to permit the attachment of the identification panel to the sign structure; provided however, that none of the previously attached identification panels on such sign structure shall be required to be modified or relocated in order to permit the attachment of such additional identification panel.

The Approving Party for the Riverwalk Parcel shall have the right to approve the design and size of all sign structures located within the Riverwalk Center, including the identification panels to be attached thereto.

The Owner of the Progressive Parcel shall have the right to placement of a panel on one (1) Pylon Sign located on 7200 South upon the same terms and conditions applicable to other Occupants set forth above, the size and location on the panel to be determined by the Approving Party.

A. Limitations on Building Signs. The Approving Party shall approve any proposed exterior signage as part of the Requested Party's application and subject to city guidelines and requirements.

B. Limitations on Temporary Signs. All temporary signage, hanging banners, flags, balloons, or inflatable signs or displays must have written approval of Approving Party and Governmental Authorities.

5.10 (omitted)

5.11 Approval of Progressive Parcel Building Signage. The current proposed Building signage submitted to Riverwalk by the owner of the Progressive Parcel is hereby approved, subject to any Governmental Requirements. Progressive Casualty Insurance Company shall have the right, without

approval from Riverwalk, to install directional and ancillary signage on the Progressive Parcel (for example, speed limit and stop signs), subject to approval of Governmental Authorities.

6. INSURANCE

6.1. During the term of this Declaration, each Party shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages with respect to the its Parcel in Constant Dollars set forth below:

A. Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence. The other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Parcel. The insurance provided herein shall be considered "primary" insurance, and all limits of such policy shall be exhausted before insurance of another Party carried pursuant to this Section 6 is considered.

B. Workers' compensation and employer's liability insurance:

(i) Worker's compensation insurance as required by any applicable law or regulation.

(ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limits for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

C. Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned by each indemnifying Party; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

6.2. Prior to commencing any construction activities within its Parcel, each Party shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

(A) Workers' compensation and employer's liability insurance:

(i) Worker's compensation insurance as required by any applicable law or regulation.

(ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limits for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

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(B) Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

- (i) Required coverages:
 - (a) Premises and Operations.
 - (b) Products and Completed Operations.
 - (c) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
 - (d) Broad Form Property Damage (including Completed Operations).
 - (e) Explosion, Collapse and Underground Hazards.
 - (f) Personal Injury Liability.

- (ii) Minimum limits of liability:
 - (a) \$1,000,000 each occurrence (for bodily injury and property damage).
 - (b) \$1,000,000 for Personal Injury Liability.
 - (c) \$2,000,000 aggregate for Products and Completed Operations.
 - (d) \$2,000,000 general aggregate applying separately to this project.

(C) Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

(D) The contractor shall also carry umbrella/excess liability insurance in the amount of \$2,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$2,000,000.

6.3 If the construction activities involve the use of another Parcel, then the constructing Party shall cause (x) the owner of such other Parcel to be an additional insured on each policy (for the Commercial General Liability policy, pursuant to a CG 2010 07 04 and CG 2037 07 04 endorsement or their equivalent, (y) with respect to the work on such other Parcel, the coverage set forth in (B)-(ii)-(3) above to be extended for a three (3) year period following final completion of work, and (z) each such policy to provide that the same shall not be cancelled, allowed to expire, nor reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to each insured. If any of the insurance policies are cancelled, expire or the amount or coverage thereof is reduced below the level required, then the constructing Party shall immediately stop all work on and use of the other Parcel until either the required insurance is reinstated, or replacement insurance is obtained, and evidence thereof is given to the owner of such other Parcel.

6.4 Except with respect to the Progressive Parcel, which is specifically exempt, effective upon the commencement of construction of any Building a Party or its contractor shall carry "Builder's Risk" insurance in the amount of one hundred percent (100%) of the full replacement cost thereof. In addition, so long as a Building exists on a Party's Parcel, such Party shall carry property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

Each Party (the "**Releasing Party**") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "**Released Party**") from any liability for any loss or damage, to all property of such Releasing Party located upon any portion of the Riverwalk Center, which

loss or damage is of the type covered by the insurance required to be maintained under this **Section 6.4**, irrespective of (i) any negligence on the part of the Released Party which may have contributed to or caused such loss, or (ii) the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance and to the policies of insurance carried by its Occupants, with respect to the foregoing release and waiver; provided, however, that failure to obtain such endorsements shall not affect the release and waiver hereinabove given. This paragraph shall not apply to the Progressive Parcel so long as it is owned and occupied by Progressive Insurance or its affiliated and related entities.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Occupant of the indemnifying Party's Parcel for any loss or damage to the property of such Occupant located upon the indemnifying Party's Parcel, which loss or damage would have been covered by the insurance required to be maintained under this **Section 6.4**. In addition, the Releasing Party's release and waiver shall include any claim for loss of rent and/or profits.

6.5 All insurance required by a Person pursuant to **Section 5.4** shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X, and which are authorized to do business in the state where the Riverwalk Center is located. All insurance may be provided under (i) a combination of primary and excess policies, (ii) an individual policy covering the Riverwalk Center, (iii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$5,000,000 in Constant Dollars, (iv) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$100,000,000 in Constant Dollars of both net worth and net current assets, or (v) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party pursuant to this Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$500,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator, if any, agrees to furnish to any Party requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by such Party or Operator, as the case may be, is in full force and effect.

6.6 Any insurance provision that requires another Person to be added as an "additional insured" shall include the following provisions:

- (A) Shall provide that the policy shall not be canceled or reduced in amount or coverage below the requirements of this Agreement nor shall such policy be allowed to expire without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured.
- (B) Shall provide for severability of interests.

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(C) Shall provide for contractual liability coverage with respect to any indemnity obligation set forth therein.

6.7 Self Insurance. Upon application and review by an Owner, the Approving Party may approve a program of self-insurance. So long as the Progressive Parcel is owned by Progressive Casualty Insurance Company or a related or affiliated entity, Progressive Casualty Insurance Company shall have the ability to self-insure all or a portion of the above insurance requirements provided it meets with the requirements of Section 6.5. .

7. DURATION.

The covenants, restrictions and conditions created herein (collectively, the "**restrictions**") shall run with and bind the Riverwalk Center and shall inure to the benefit of and be enforceable by the owners of the Parcels within the Riverwalk Center, their respective legal representatives, heirs, successors and assigns; provided that except as otherwise specifically made perpetual hereunder, the restrictions and easements set forth herein shall terminate and be of no further force and effect thirty (30) years from the date hereof unless, at such time, the Riverwalk Parcel is being used for retail purposes (or is not being so used due to construction, casualty, repair, remodeling or refixturing) in which event the restrictions shall continue to remain in full force and effect for successive five (5) year periods until such time as such use requirement is no longer satisfied. In no event shall the restrictions created herein remain in effect for more than eighty (80) years from the date hereof.

8. MISCELLANEOUS.

8.1. Default.

8.1.1. The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Party (the "**Defaulting Party**"):

(A) The failure to make any payment required to be made hereunder within ten (10) days after the due date.

(B) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (A) above, within thirty (30) days after the giving of a notice by another Party or Operator, as the case may be (the "**Non-Defaulting Party**") specifying the nature of the default claimed; provided however, if such default cannot reasonably be cured within said 30-day period, then, provided the Defaulting Party notifies the Non-Defaulting Party of such claimed inability to cure and the Defaulting Party begins to cure the default within said 30-day period and is diligently pursuing such cure, the Defaulting Party shall be entitled to additional time, not to exceed thirty (30) additional days, to cure such default.

8.1.2. With respect to any default under **Section 8.1.1 (B)**, any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, if any, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or

services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non- Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. In the event the Defaulting Party does not reimburse the Non- Defaulting Party as set forth above, in addition to any other remedy available, the Non-Defaulting Party shall have the right to offset such amount owed against any current or future sum of money due the Defaulting Party until the full amount owed is recovered.

The right to cure the default of another Party shall not be deemed to:

- A. Impose any obligation on a Non-Defaulting Party to do so.
- B. Render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so.
- C. Relieve the Defaulting Party from any performance obligation hereunder.
- D. Relieve the Defaulting Party from any indemnity obligation as provided in this Declaration.

8.1.3. The cost and expense incurred to cure a default, and/or any Interest accruing with respect to a default, shall constitute a lien against the Defaulting Party's Parcel. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Riverwalk Center is located by the Party making such claim. The claim of lien shall include the following:

- A. The name of the lien claimant.
- B. A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.
- C. An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed.
- D. A description of the Parcel against which the lien is claimed.
- E. A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.
- F. A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date and recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to **Section 7.4** below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Riverwalk Center is located. The lien shall be subject and subordinate to any mortgage or deed of trust which is of record before the claim of lien is placed of record.

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8.1.4. Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a Party brings an action of law or in equity to enforce the terms and provisions of this Declaration, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition to any remedy granted.

8.2. Interest. Any time a Party or Operator, if any, shall not pay any sum payable hereunder to another Party within five (5) days of the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Party entitled thereto, at the lesser of:

A. The highest rate permitted by law to be either paid on such type of obligation by the Party obligated to make such payment or charged by the Party to whom such payment is due, whichever is less.

B. The prime rate, plus three percent (3%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Party .

8.3 Estoppel Certificate. Each Party and Operator, if any, agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, it will issue within thirty (30) days after receipt of such request to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

A. Whether it knows of any default under this Declaration by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.

B. Whether this Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.

C. Whether this Declaration is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel

certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Party was required but not sought or obtained.

8.4 Notices. All notices, demands and requests (collectively, the "**notice**") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended. The initial addresses of the Declarant and Operator shall be:

Declarant:

Riverwalk Investments II, LLC
c/o Wadsworth Development Group
166 East 14000 South, Suite 210
Draper, Utah 84020
Attn: Kip Wadsworth

Operator:

Riverwalk Investments II, LLC
c/o Wadsworth Development Group
166 East 14000 South, Suite 210
Draper, Utah 84020
Attn: Kip Wadsworth

Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

8.5 Approval Rights.

8.5.1 Except as otherwise specifically provided in this Declaration, with respect to any matter as to which a Party has specifically been granted an approval right under this Declaration, nothing contained in this Declaration shall limit the right of a Party to exercise its business judgment in its sole discretion, whether or not "objectively" reasonable under the circumstances, and any such decision shall not be deemed inconsistent with any covenant of good faith and fair dealing which may be implied by law to be part of this Declaration. The Parties intend by this Declaration to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

8.5.2 Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this Declaration shall be given by the Party to whom directed within thirty (30) days after receipt thereof. If no response is given it is deemed denied.

8.6 Condemnation. In the event any portion of the Riverwalk Center shall be condemned,

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or conveyed under threat of condemnation, the award shall be paid to the Party owning the Parcel or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one (1) Party, such as Utility Lines or Signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this Declaration, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Party owning the Parcel or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this Declaration shall expire or terminate based solely upon such taking.

8.7 Binding Effect. The terms of this Declaration and all easements granted hereunder shall constitute covenants running with the land and shall bind the Parcels described herein and inure to the benefit of and be binding upon each Party. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

8.8 Construction and Interpretation.

8.8.1 Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. Whenever this Declaration imposes an obligation upon a Party to perform an action (e.g. obtain a policy of insurance) such obligation shall be deemed satisfied if such Party has caused such obligation to be performed regardless of whether such Party has itself performed such action; provided however, that nothing shall relieve such Party from responsibility for complying or causing compliance with the terms and provisions of this Declaration.

8.8.2 The captions preceding the text of each article and section of this Declaration are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

8.8.3 Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

8.8.4 This Declaration may be amended by, and only by, a written agreement signed by then current Approving Party and shall be effective only when recorded in the county and state where the Riverwalk Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Parcel unless such Party has joined in the execution of such amendment. No agreement to any amendment of this Declaration shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Since the submission of a proposed

amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this Declaration in its sole and absolute discretion without regard to reasonableness or timeliness.

8.8.5 This Declaration and any amendments thereto, may be executed in several counterparts, each of which shall be deemed an original. The signatures may be executed and notarized on separate pages, and when attached to each other shall constitute one (1) complete document.

8.9 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

8.10 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Riverwalk Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

8.11 Excusable Delays. Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section 8.11 shall not operate to excuse any Party from the prompt payment of any monies required by this Declaration.

8.12 Mitigation of Damages. In all situations arising out of this Declaration, each Party and Operator, if any, shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this Declaration.

8.13 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall (i) entitle any Party to cancel, rescind, or otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Riverwalk Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

8.14 Time. Time is of the essence of this Declaration.

8.15 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this Declaration shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of

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any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration. The failure of a Party to provide a Reconciliation or statement for amounts owed within a specified time shall not act as a waiver of such Party's right to collect such amount upon the later issuance of the required Reconciliation or statement.

8.16 Attorney's Fees. If any Party brings an action of law or in equity to interpret or enforce this Declaration, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition to any other remedy granted.

8.17 Taxes and Assessments. Each Party shall pay, prior to delinquency, all taxes and assessments with respect to its Parcel, the Building, and other improvements located thereon, and any personal property owned or leased by such Party in the Riverwalk Center, provided that if such taxes or assessments or any part thereof may be paid in installments, each Party may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Party from contesting at its cost and expense any taxes and assessments with respect to its Parcel in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

9. SEVERABILITY.

Invalidation of any of the provisions herein by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect, until the date of expiration hereunder.

10. EXCULPATION

10.1 Certain Limitations on Remedies

None of the Persons comprising a Party (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party. Each Party agrees to look solely to the interest in the Riverwalk Center of a Defaulting Party for recovery of damages for any breach of this Declaration; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party:

- (a) Casualty Insurance and Condemnation Proceeds. To recover from a Party all damages and costs on account of, or in connection with, such Party's failure to apply or use casualty insurance or condemnation proceeds in accordance with the terms of this Declaration.
- (b) Hazardous Substances. To recover from a Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under **Section 5.3.**
- (c) Liability Insurance and Indemnity. To recover from a Party all damages and costs arising out of or in connection with, or on account of, either a breach by such Party of its obligations under Section 6.4, or a failure by such Party to satisfy any indemnity obligation required of it under this Declaration.

- (d) Taxes, Assessments and Liens. To recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified in Section 8.17 or Section 8.1.
- (e) Fraud or Misrepresentation. To recover from a Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenant or condition in this Declaration.
- (f) Equitable Relief; Costs. To pursue equitable relief in connection with any term, covenant or condition of this Declaration, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance, and recover all costs, including Interest thereon, relating to such enforcement action.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed as of the day and year first above written.

RIVERWALK INVESTMENTS II, LLC,
a Utah limited liability company

By: Wadsworth Riverwalk Investments II, LLC,
a Utah limited liability company
Its: Manager

By: Wadsworth & Sons III, LLC,
a Utah limited liability company
Its: Manager

By: _____
Name: _____
Its: Executive Manager

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

On the 14 day of March, 2013, personally appeared before me Kip Wadsworth, the signer of the foregoing instrument who duly acknowledged to me that he is the Executive Manager of Wadsworth & Sons III, LLC, a Utah limited liability company, the manager of Wadsworth Riverwalk Investments II, LLC, a Utah limited liability company, the manager of Riverwalk Investments II, LLC, and is authorized to execute this document on behalf of the company, and that he executed the same.

Susan Forbush
Notary Public



Exhibit "A"
Legal Description

All of Lot 4A, RIVER WALK AT BINGHAM JUNCTION LOT 4 AMENDED, according to the official plat thereof, filed in Book "2008P" of Plats, at Page 146 of the Official Records of the Salt Lake County Recorder.

Exhibit B
 Preliminary Site
 Plan

